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April 15, 1999

By Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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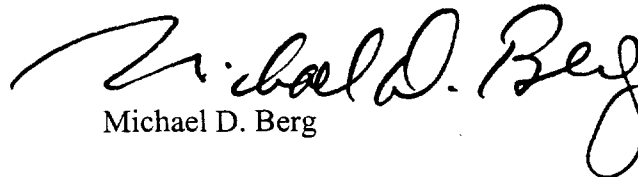
Re: **Reply Comments of Lincoln Broadcasting Company,
A California Limited Partnership, in MM Dockets 98-204 and 96-16
(Equal Employment Opportunity)**

Dear Ms. Salas:

Submitted herewith for filing on behalf of Lincoln Broadcasting Company, A California Limited Partnership, licensee of television broadcast station KTSF(TV), San Francisco, California, are the original and eleven copies (including one for each Commissioner) of the licensee's Reply Comments in the above-referenced proceedings.

Please direct any questions concerning this filing to the undersigned. Thank you.

Respectfully submitted,


Michael D. Berg

Attorney for
Lincoln Broadcasting Company,
A California Limited Partnership

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	
Review of the Commission's)	MM Docket No. 98-204
Broadcast and Cable)	
Equal Employment Opportunity)	
Rules and Policies)	
and)	
Termination of the)	MM Docket No. 96-16
EEO Streamlining Proceeding)	

REPLY COMMENTS OF
LINCOLN BROADCASTING COMPANY

Michael J. Sherman,
General Manager
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April 15, 1999

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Its Attorneys

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Review of the Commission's)	MM Docket No. 98-204
Broadcast and Cable)	
Equal Employment Opportunity)	
Rules and Policies)	
and)	
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EEO Streamlining Proceeding)	

REPLY COMMENTS OF LINCOLN BROADCASTING COMPANY

Lincoln Broadcasting Company ("Lincoln"),¹ licensee of television broadcast station KTSF (TV) ("KTSF"), San Francisco, California, by its attorneys, submits these Reply Comments in response to certain opening comments and the Commission's *Notice of Proposed Rulemaking* in the above-captioned proceeding ("Notice").²

I. INTRODUCTION AND RELIEF SOUGHT

KTSF is a commercial, independent, family- and locally-owned television station which has been broadcasting in San Francisco since 1976. The station is one of the few in the United States that is principally owned and controlled by a woman. For more than two decades, KTSF has offered a rich diversity of programming, including news, information, public affairs and entertainment, in approximately 12 foreign languages (primarily Asian), and in English. In particular, KTSF has been the principal source of television programming in the multiple Asian languages spoken by hundreds of thousands of viewers throughout the San Francisco Bay Area.

¹ The full name of the licensee is Lincoln Broadcasting Company, A California Limited Partnership.

² 13 FCC Rcd 23004(1998).

A substantial portion of these viewers either speaks no English or speaks English as a second language; for example, 32% are considered “linguistically isolated.”³

Currently, 100% of the station’s prime time schedule is in languages other than English, and the station responds directly and uniquely to the needs and interests of multiple, diverse communities within its service area. KTSF, for example, produces and airs an award-winning daily hour-long newscast in Cantonese. In addition, KTSF produces locally and airs regular public affairs interview programs, in various Asian languages and English on a rotating basis, to meet the needs of historically underserved communities within the viewing audience. Accordingly, fluency in the languages of the station’s programming is a bona fide occupational qualification for many of the station’s job positions, and requires particularized recruitment.⁴

Through its programming and in other ways, KTSF, whose slogan is “Your Window to the World,” places extraordinary emphasis upon addressing community problems; serves as a bridge between minority communities and the larger society; and promotes the equal opportunity and First Amendment objective of diversity of programming and viewpoints.

Lincoln promotes vigorously the goals of the Commission’s EEO rules. It has, for example, an active, comprehensive EEO program designed to attract qualified minority and

³ U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, 1990 U.S. Census. The Bureau defines a “linguistically isolated” household as one in which no person age 14 years or over speaks only English, and no person age 14 or over who speaks a language other than English speaks English “very well.”

⁴ The Minority Media and Telecommunications Council (MMTC) has authorized Lincoln to state in these Reply Comments MMTC’s agreement that foreign language fluency is a bona fide occupational qualification (“BFOQ”) for most positions at a foreign language station, much as the court found in the Lutheran Church decision with respect to religious affiliation at religious broadcast stations, and that it would therefore not be unreasonable for a foreign language broadcaster to recruit only from sources providing access to a substantial pool of applicants having that BFOQ.

female applicants for all job categories. Consequently, as a broadcast licensee, Lincoln has a significant interest in the issues raised in this proceeding, and in the Commission's EEO policies in general. Lincoln also filed Reply Comments in the Commission's now terminated *EEO Streamlining* proceeding, in which it asked the Commission to build into its EEO rules flexibility for stations like KTSF which are "distinctly situated" in light of their substantially foreign language programming.⁵

II. THE COMMISSION SHOULD ALLOW FOREIGN LANGUAGE STATIONS FLEXIBILITY IN DESIGNING AND IMPLEMENTING THEIR EEO PROGRAMS.

As explained in detail in the incorporated Lincoln Reply Comments in the *EEO Streamlining* proceeding, many of the station's employment opportunities require fluency or proficiency in one or more of the dozen or more foreign languages of KTSF's programming. Even as to other positions, opportunities at the station apparently are perceived as particularly attractive by those minority applicants who self-identify with the languages and cultures that are the focus of much of the station's programming. As a result, recruitment of employees from other specific minority groups has at times proved more difficult despite the station's allocation of considerable staff time and resources to extraordinary outreach efforts to non-Asian minority referral sources as part of the station's EEO program.

⁵ Reply Comments of Lincoln Broadcasting Company filed October 25, 1996 in MM Docket No. 96-16, *Order and Notice of Proposed Rulemaking*, 11 FCC Rcd 5154 (1996) (*Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines*). These earlier Reply Comments are attached as Appendix A and are incorporated herein; although the issues discussed there relate in part to the Commission's former processing guidelines, Lincoln's primary concern – that the FCC's rules contain flexibility to take into account the unique circumstances of foreign language stations – applies equally to the proposals set forth in this proceeding.

In these circumstances, Lincoln agrees with those opening commenters who argue that the revised EEO rules should allow broadcast licensees flexibility in designing their EEO programs.⁶ Specifically, stations which emphasize foreign language television, such as KTSF, should be allowed broad flexibility to determine the specific number and types of recruitment sources for job vacancies.⁷ For example, Lincoln urges the Commission not to adopt a requirement that foreign language television station licensees contact a certain number or type of recruitment sources for job openings or achieve particular results from such contacts. Rather, the Commission should deem a foreign language television station as in compliance with any recruitment requirement, or any other specific, quantified requirement that may be adopted, so long as it: (1) contacts a broad array of recruitment sources which the station determines to be likely to refer qualified minority and female applicants for job vacancies, and otherwise maintains an EEO program, and (2) there is no evidence of unlawful discrimination. Foreign

⁶ See e.g., Comments of Evening Post Publishing Company and Great Empire Broadcasting, Inc. at 20 (“[b]ecause every station and market are different, broadcasters should be given maximum flexibility to design programs that meet their own unique needs . . .”); Comments of Virginia Association of Broadcasters and North Carolina Association of Broadcasters, at 10 (“[w]ith . . . flexibility, broadcasters could fashion their EEO efforts in ways best suited to their local communities, rather than being forced to hav[e] to follow a “cookie cutter” FCC-mandated program.”); The WBUR Group Comments, at 2 (“[t]he ability to use discretion in these matters gives broadcasters the ability to define a recruitment strategy and sources best designed for their organization and community, versus a defined set of guidelines which could be inapplicable for some broadcasters and onerous for others.”).

⁷ In its incorporated Reply Comments, Lincoln suggested that a ready-made, easily administered standard exists for defining which stations broadcast enough foreign language programming to qualify for the requested flexibility: at least one-third of the hours of an average broadcast week, and one third of weekly prime time hours, of foreign language programming. This has been used by the Commission historically to define qualification for “specialty station” treatment in the context of cable carriage of television signals, see former 47 C.F.R. § 76.5(kk) (1981), and is also used currently in the same context by the U.S. Copyright Office, 54 Fed. Reg. 38466 (1989).

language stations, particularly those such as KTSF which are dedicated to fulfilling the programming needs of minorities, should not be penalized for difficulties in attracting members of other minority groups for specific job vacancies so long as both of the above-noted factors have been met.

Finally, in the *Notice* the Commission sought comment on whether it should provide administrative relief from EEO reporting and recordkeeping requirements to small stations and stations located within small markets.⁸ Lincoln urges the Commission to apply any such relief to foreign language television stations such as KTSF. As explained above, foreign language television stations have special needs and circumstances which affect their ability to recruit minorities. Stations such as KTSF, which strive to provide diverse programming and serve significant segments of the television audience that may otherwise go unserved, should not be penalized under the Commission's EEO rules in the form of overly burdensome reporting and recordkeeping requirements.

In this and its other recommendations, Lincoln is not suggesting that it be exempted from EEO requirements in light of its foreign language "format." Rather, Lincoln requests only that the Commission, in adopting EEO rules, take into account, and provide flexibility for, the special needs and circumstances of foreign language stations such as KTSF. Allowing this flexibility in recruitment and otherwise will strike a proper balance between ensuring equal opportunities for women and minorities at these stations, and ensuring that revised EEO rules do not become overly burdensome or counterproductive for these stations and the service they provide to historically underserved minority audiences.

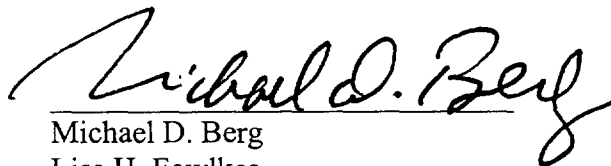
⁸ Notice, at ¶ 85.

III. CONCLUSION

For the reasons explained above and in the attached earlier-filed Reply Comments, the Commission should recognize that KTSF and other television stations that program heavily in foreign languages have special needs and circumstances regarding the recruitment and hiring of minority applicants. Rather than requiring these stations to comply with a specified recruitment or other type of "numerical" guideline or onerous reporting requirements, the Commission should allow foreign television stations maximum flexibility in designing and implementing their EEO programs. Put simply, the Commission should deem foreign language stations, defined as suggested herein in footnote 7, to be in compliance with the revised EEO rules so long as such stations do not engage in unlawful discrimination, and maintain an ongoing EEO recruitment program with respect to minorities and women.

Respectfully submitted,

**LINCOLN BROADCASTING COMPANY,
A CALIFORNIA LIMITED PARTNERSHIP**



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Attachment: Appendix A: earlier Reply Comments in MM Docket No. 96-16, incorporated herein by reference

April 15, 1999

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CERTIFICATE OF SERVICE

The undersigned, a legal secretary with the law firm of Verner, Liipfert, Bernhard, McPherson & Hand, Chartered, hereby certifies that on this 15th day of April 1999, I caused copies of the foregoing document to be served by first class, prepaid U.S. mail to the following:

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Helene M. McGrath

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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OCT 25 1996

In the Matter of)
Streamlining Broadcast EEO)
Rules and Policies, Vacating the EEO)
Forfeiture Policy Statement)
and Amending Section 1.80 of)
the Commission's Rules To Include)
EEO Forfeiture Guidelines)

Federal Communications Commission
Office of Secretary

MM Docket No. 96-16

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REPLY COMMENTS OF
LINCOLN BROADCASTING COMPANY

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October 25, 1996

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MM Docket No. 96-16

REPLY COMMENTS OF LINCOLN BROADCASTING COMPANY

1. Lincoln Broadcasting Company ("Lincoln"),^{1/} licensee of television broadcast station KTSF (TV) ("KTSF"), San Francisco, California, by its attorneys, submits these Reply Comments in response to certain opening comments and the Commission's *Notice of Proposed Rulemaking* in the above-captioned proceeding (hereinafter "*Notice*").^{2/}

I. INTRODUCTION AND BACKGROUND

2. KTSF is a commercial, independent, family- and locally-owned television station which has been broadcasting in San Francisco since 1976. The station is one of the few in the United States that is principally owned and controlled by a woman. For more than two decades, KTSF has offered a rich diversity of programming, including news,

^{1/} The full name of the licensee is Lincoln Broadcasting Company, A California Limited Partnership.

^{2/} 11 FCC Rcd. 5154 (rel. Feb. 16, 1996).

information, public affairs and entertainment, in approximately 12 foreign languages (primarily Asian), and in English. In particular, during this time and continuing at present, KTSF has been the principal source of television programming in the multiple Asian languages spoken by hundreds of thousands of viewers throughout the San Francisco Bay Area. A substantial portion of these viewers either speaks no English or speaks English as a second language; for example, 32 % are considered "linguistically isolated."^{3/} Currently 100% of the station's prime time schedule is in languages other than English, and the station responds directly and uniquely to the needs and interests of multiple, diverse communities within its service area. The station, for example, produces and airs an award-winning daily hour-long newscast in Cantonese; this was the first live newscast of its kind in the nation. KTSF also produces locally and airs regular public affairs interview programs, in various Asian languages and English on a rotating basis, to meet the needs of historically underserved communities within the viewing audience. In these and other ways, KTSF, whose logo is "Your Window to the World," places extraordinary emphasis upon addressing community problems; serves as a bridge between minority communities and the larger society; and promotes the equal opportunity objective of diversity of programming and viewpoints.

3/ U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, 1990 U.S. Census. The Bureau defines a "linguistically isolated" household as one in which no person age 14 years or over speaks only English, and no person age 14 years or over who speaks a language other than English speaks English "very well."

3. KTSF also promotes vigorously the second goal of Commission EEO requirements: to deter discriminatory employment practices.^{4/} KTSF maintains an active, comprehensive EEO program directed to all the target categories. The station's employment profile generally reflects levels of total minority, Asian and Pacific Islander and female employment that far exceed the Commission's 50%-of-parity processing guidelines. These levels are at times far higher than full parity with workforce representation (i.e., twice the guideline percentages). Some of the station's employment opportunities require proficiency in a particular foreign language. Even where that is not the case opportunities at the station apparently are perceived as particularly attractive by those minority applicants who self-identify with the languages and cultures that are the focus of much of the station's programming. Recruitment of employees from other specific minority groups has at times proved more difficult despite the station's allocation of considerable staff time and resources to extraordinary outreach efforts to non-Asian minority referral sources as part of the station's EEO program.

4. As a result, KTSF submits these Reply Comments for the limited but crucial purpose of supporting opening comments that point to the need to include stations which broadcast substantially in foreign languages among the distinctly situated stations to which more flexible EEO standards apply.^{5/} KTSF is a "distinctly situated" broadcaster which

^{4/} Notice at 3.

^{5/} See Comments of the California Broadcaster's Association, Minnesota Broadcaster's
(continued...)

advances, on a daily basis and as an integral part of its programming and business plan, the goal of the Commission's equal employment opportunity (EEO) requirements "to promote programming that reflects the interests of minorities and women in the local community in addition to those of the community at large."^{6/} As such Lincoln is concerned that proposals in the *Notice*, and in comments submitted by other parties, do not adequately take into account the circumstances of KTSF and other similarly situated foreign language television stations.

II. THE COMMISSION SHOULD RECOGNIZE AS "DISTINCTLY SITUATED" STATIONS THAT MEET THE EXISTING TEST OF FOREIGN LANGUAGE "SPECIALTY TELEVISION STATIONS"

5. In the *Notice*, the Commission stated its concern that "our EEO requirements may unnecessarily burden broadcasters, particularly licensees of smaller markets and other distinctly situated broadcasters."^{7/} The Commission sought "comment on how to improve our EEO Rule and policies to afford relief to licensees and permittees of small stations and other distinctly situated broadcasters without undermining the effectiveness of the [EEO] program."^{8/} The Commission discussed three possible factors to qualify a station for

5/(...continued)

Association, Missouri Broadcasters Association, and North Dakota Broadcaster's Association (hereinafter the "Associations") at 5 n.8; Comments of the Texas Association of Broadcasters at 11.

6/ *Notice* at 2-3.

7/ *Notice* at 2 (emphasis added).

8/ *Id.* at 10 (emphasis added).

relaxed EEO reporting requirements: the size of a station's staff; the size of a station's market; and the size of the local minority labor force.^{9/} In addition, the Commission proposed that a combination of each of these factors be considered.^{10/}

6. KTSF submits that foreign language stations should also qualify for the needed relief proposed by the Commission. None of the three criteria proposed in the *Notice* would be available to KTSF. This is despite the fact that programming diversity, which KTSF provides in abundance, is the principal goal of the Commission's EEO program.^{11/} Stations such as KTSF, which strive to provide diverse programming and serve significant segments of the television audience that may otherwise go unserved, should not be penalized by the Commission's EEO rules for doing so.

7. KTSF agrees with, and has experienced first-hand, the unique difficulties cited by the Comments of the California Broadcasters Association *et al.* that a foreign language format presents to strict compliance with each sub-requirement of the Commission's current EEO regime.^{12/} In particular, the "dominant minority" standard should not be applied to

^{9/} *Id.* at 11-12.

^{10/} *Id.* at 12.

^{11/} *See Florida State Conference of NAACP v. F.C.C.*, 24 F.3d 271, 272 (D.C. Cir. 1994).

^{12/} Comments of the Associations at 5 n8. The Texas Association of Broadcasters also points out the difficulties of complying with the Commission's EEO requirements when language proficiency is a factor in hiring. Comments of the Texas Association of Broadcasters at 11.

stations whose programming is directed to other minorities present in the service area. Nor should the Commission require compliance with processing criteria employment levels for each separate minority group, as long as the station maintains the required EEO program and efforts and there is no evidence of discrimination.

8. A ready-made, easily-administered standard exists for defining which stations broadcast enough foreign language programming to qualify for the new flexibility: at least one-third of the hours of an average broadcast week, and one third of weekly prime time hours, of foreign language programming. This has been used by the Commission historically to define qualification for "specialty station" treatment in the context of cable carriage of television signals,^{13/} and is also used currently in the same context by the U.S. Copyright Office.^{14/}

III. CONCLUSION

The Commission should recognize that KTSP and other television stations that program heavily in foreign languages have special circumstances regarding the recruitment and hiring of minority employees. Rather than apply all of the same guidelines that it does to non-specialty stations, the Commission should simply ensure that specialty format stations do not engage in unlawful discrimination; that they maintain an ongoing EEO recruitment program with respect to women and minorities; and that they meet the "total minority" (and

^{13/} See former 47 C.F.R. § 76.5(kk) (1981).

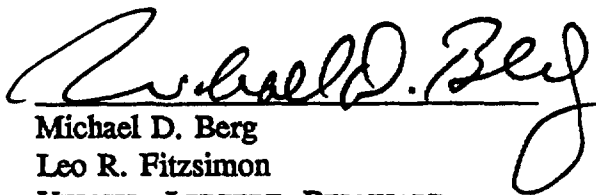
^{14/} 54 Fed. Reg. 38466 (1989).

all female) guidelines. But a station should not have to risk EEO sanctions "by the numbers"^{15/} for promoting program diversity and equal opportunity. For qualified foreign language television stations the Commission should not apply the "dominant minority" test, and should limit its EEO inquiry to the absence of discrimination and maintenance of an EEO program directed to all, without the risk of sanctions regarding numerical guidelines other than total minority (and female) employment. Any additional relief measures adopted by the Commission in this proceeding should also be applied to the distinctly situated stations described in these Reply Comments.

Respectfully submitted,

**LINCOLN BROADCASTING
COMPANY, A California Limited
Partnership**

By:



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^{15/} If one minority group is predominant in an area, the Commission expects a station to achieve 50% of parity with respect to that particular group. *Alabama and Georgia Broadcast Station Renewals*, 4 FCC Rcd 5968 (1991).